

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

LINDA LOUSIE BRADY)
v.) No. 19-605
ANDREW M. SAUL,

COMMISSIONER OF SOCIAL
SECURITY

MEMORANDUM ORDER

Plaintiff filed her Complaint in this action on May 22, 2019. [ECF No. 1]. Her Motion for Summary Judgment followed, on August 26, 2019. [ECF No. 14]. Therein, Plaintiff argued that an Administrative Law Judge (“ALJ”) erred, in various substantive respects, in denying her claim for disability insurance benefits and supplemental social security income benefits. Defendant filed its Motion for Summary Judgment on November 15, 2019. [ECF No. 20]. Subsequently, on May 19, 2020, with leave of Court, Plaintiff filed a First Amended Complaint and Brief in Support, on grounds that the ALJ who rendered the unfavorable decision had not been constitutionally appointed under Lucia v. SEC, 138 S. Ct. 2044 (2018). [ECF No. 31]. Defendant opposes the latter amendment on grounds that Plaintiff waived her Lucia argument by failing to raise it in her initial Motion. [ECF No. 36].

Within this District, Courts have recently rejected Defendant’s waiver arguments under similar circumstances. See, e.g., Schaffer v. Saul, No. 19-01153, 2020 WL 2526938 (W.D. Pa. May 18, 2020); Lenz v. Saul, No. 19-489, 2020 WL 2571902 (W.D. Pa. May 20, 2020); Fetter v. Saul, No. 19-730, 2020 WL 3036626 (W.D. Pa. June 5, 2020). As Judge Bloch observed, “while Lucia had been decided prior to the initial round of briefing in this case, Cirko [v. Commissioner of Soc. Sec., 948 F. 3d 148 (3d Cir. 2020)] had not. Although a plaintiff certainly could have

devised an Appointments Clause argument in the social security context based on Lucia, Lucia did not actually address the issue directly. Cirko did." Waldor v. Saul, No. 18-1165, 2020 WL 2557340, at *2 (W.D. Pa. May 20, 2020). An Appointments Clause issue is consequential, as an "alleged defect in the appointment ... goes to the validity of [the court] proceeding that is the basis for this litigation." Culclasure v. Comm'r of the SSA, 375 F. Supp. 3d 559, 572 (E.D. Pa. 2019).

I will follow the reasoning and analyses of my colleagues within this District. Plaintiff is entitled to adjudication of her claim by an ALJ other than ALJ John Kooser. Accordingly, Plaintiff's Motion for Summary Judgment is granted only with respect to her amended claim for relief under Cirko, as briefed on May 19, 2020, and denied as moot in all other respects. Given this outcome, the Court need not address Plaintiff's remaining arguments; attention is best paid to alleged errors during proceedings held on remand. Defendant's Motion for Summary Judgment is denied, and the matter is remanded accordingly. AND NOW, this 1st day of July, 2020, IT IS SO ORDERED.

BY THE COURT:



Donetta W. Ambrose

Senior Judge, U.S. District Court